

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**REPORT AND RECOMMENDATION**

APPLICANT/OWNER: Robert Cugini  
Barbee Mill Company  
3905 Lake Washington Blvd. N.  
Renton, WA 98056

CONTACT: Alan Foltz  
Waterfront Construction, Inc.  
205 Northlake Way, Ste. 230  
Seattle, WA 98105

Barbee Mill Watercraft Lifts  
LUA-10-050, ECF, SM, SMC

LOCATION: 3905 Lake Washington Boulevard North

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the installation of two 10-foot by 14-foot freestanding boatlifts, one 10-foot by 20-foot freestanding boatlift with a fully grated platform, and one dock-mounted jet ski lift in association with an existing joint use dock which serves three single-family residential lots in the R-8 zone.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on September 21, 2010.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

**MINUTES**

*The following minutes are a summary of the September 28, 2010 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, September 28, 2010, at 9:44 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<b><u>Exhibit No. 2:</u></b> Vicinity Map and Area Map

<b><u>Exhibit No. 3:</u></b> Plot Plan	<b><u>Exhibit No. 4:</u></b> Detail View and Elevation View
<b><u>Exhibit No. 5:</u></b> Aerial Photograph – Homes Served by Joint Use Dock	<b><u>Exhibit No. 6:</u></b> Zoning Map
<b><u>Exhibit No. 7:</u></b> ERC Determination	<b><u>Exhibit No. 8:</u></b> ERC Mitigation Measures
<b><u>Exhibit No. 9:</u></b> ERC Advisory Notes	<b><u>Exhibit No. 10:</u></b> Shoreline Substantial Development Permit

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98057. The existing dock is approximately 118.5 feet long and includes a 31 foot ramp and an 86.5 dock section. There are some creosote piles located on the property and the applicant would be replacing them with steel piles.

The project consists of the installation of three boatlifts and one jet ski lift. Two of the boatlifts would be 10 x 14 feet, they would be freestanding, resting on the lake bottom. Each would have four 12-inch footpads. The third boatlift would be 10 x 20 feet and would be a platform lift and fully grated.

The ERC issued a Determination of Non-Significance – Mitigated, with two mitigation measures. There were no appeals.

There are 5 criteria listed in the Renton Municipal Code for approval of a Shoreline Conditional Use Permit. This use is compatible with other permitted uses within the area. There are many other docks and watercraft lifts in the vicinity. This project is not associated with a public shoreline, there is access to Lake Washington via a public trail located immediately to the north of this project. Docks and watercraft lifts are generally associated with residential uses along the lake, both the existing dock and the proposed 10 x 20 foot platform boat lift are fully grated would minimize impacts to the ecological functions in critical areas.

The Examiner questioned if these new structures would aid in the preservation and enhancement of the natural character of the shoreline.

Mr. Wasser continued that they might not be enhancing the shoreline but they do provide a mitigation for light transmission. Conditional uses may be authorized provided that the applicant demonstrates that the use is consistent with RCW 90.58.020 and the master program, that the proposed use will not interfere with the normal public use of public shorelines, that the proposed use of the site is compatible with other authorized uses within the area, that the proposed use will cause no significant adverse effects to the shoreline environment and that the public interest suffers no substantial detrimental effects. It appears that the applicant has met all the criteria.

Further in granting all conditional use permits consideration should be given to the cumulative impact of additional requests for like actions and the proposed watercraft lifts are compatible with adjacent residential properties. Watercraft lifts are not uses currently set forth in the Shoreline Master Program, therefore a Shoreline Conditional Use Permit would be required. The lifts do provide a secure moorage for watercraft and are commonly used in this area. Watercraft lifts are not specifically prohibited by the City's Shoreline Master Program.

Alan Foltz, 205 NE Northlake Way, # 230, Seattle 98105 stated that there are two boat lifts and one jet ski lift plus an additional freestanding boatlift with a platform on top. That is a design that was recently permitted with

the City of Renton for the Seahawks. It was suggested as a safety measure, piers today are built 2'6" above ordinary high water, which is a substantial distance above the high water when the lake is down leaving approximately 4 feet to get onto a very small vessel. The platform lift can be positioned from the bottom of the lake up to deck level, which offers a big safety feature for people who are boarding smaller vessels.

The Examiner questioned the shadows on the lake that would be cast when there are boats on top.

Mr. Foltz agreed but stated that there would be no more shadowing than with boats tied to a dock. A large amount of light does go under the boats that are out and above the water. There is quite a bit of water depth under the entire pier structure.

With the existing piling and booms for heavy weather protection, they would be removing three 12-inch diameter piles and would put in a single steel pile. This would reduce the area and still allow the retention of the boom. Storms can be quite strong on the south end of the lake, the booms have been very substantial in this area and work very effectively. This is a joint use pier, which is meant to reduce the number of private residences that would be allowed into one pier structure that would accommodate the three ownerships of the joint use arrangement. In a joint use arrangement all owners are responsible for the maintenance of the structures.

The Examiner asked if one of the lots were sold and the new person wanted their own pier.

Mr. Foltz stated that there would be no way to do that. Two piers are not allowed on a single property. Regarding the sewer lines and other underwater materials, a call for locate would be placed prior to any construction in the water. No additional power would be needed for the piers, they are solely operated by solar power.

Neil Watts, Development Services Director stated that the underwater sewer line is outside the area of the dock and would not be affected by these boatlifts.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 10:09 a.m.

## **FINDINGS, CONCLUSIONS & RECOMMENDATION**

### **FINDINGS:**

1. The applicant, Alan Foltz for Barbee Mill Company, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install three (3) boatlifts and a jet ski lift in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance- Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.

6. The subject site is located at 3905 Lake Washington Boulevard North. The subject site consists of an approximately 8,870 square foot lot. The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of single family residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned R-8 (Residential - 8 lots per acre). The site is developed with a single family home.
9. The subject site was annexed to the City with the adoption of Ordinance 1800 enacted in October 1959.
10. The subject site and the two adjoining lots to the north, 3907 and 3909 Lake Washington Boulevard, currently share a joint-use dock. The new facilities, the two boatlifts, the platform lift and jet ski lift would continue to be used jointly by the three homes.
11. In addition to installing the new lifts, the applicant will be removing six, 12-inch diameter creosote-treated piles and replacing them with two steel piles.
12. The existing dock varies from approximately 4.5 feet to just under 8 feet in width. Two finger piers, approximately 7'2" by 27 feet long, extend to the north, approximately 14 feet and 50 feet from the western end of the long dock.
13. Each of the boatlifts will be free-standing supported by four 12-inch square footpads resting directly on the lake's bottom. The lifts will be open structures with no covers. The platform lift will be fully grated to allow the passage of light to the water. The platform lift is intended to allow boarding of smaller craft when the lake's level is down during an approximately eight (8) month period. The jet ski lift will be dock-mounted.
14. The two boat lifts will be located on the north side of the dock between the two finger piers. The jet ski lift will be located on the shoreward side (east) of the easternmost finger pier. The platform lift will be located on the north side of the dock, again, eastward of the eastern finger pier.
15. The lifts will be delivered by barge and all work will occur from the barge. It would take approximately one to three days for installation.
16. Code requires a five foot side yard setback from the property line. The proposal meets this requirement.
17. Any work in the lake will occur during the Washington State Department of Fish and Wildlife "fish window" that runs from July 16 to December 31. A silt fence will be installed around the work area.
18. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline. This section of shoreline and a portion of the lake bed are privately owned.
19. Other boatlifts have been approved along other areas of the Lake Washington shoreline in Renton.

20. A sewer line is located in the lake bed outward from the work site and will not be affected by the installations.

**CONCLUSIONS:**

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.

Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:

- i. The use must be compatible with other permitted uses within that area.
- ii. The use will not interfere with the public use of public shorelines.
- iii. Design of the site will be compatible with the surroundings and the City's Master Program.
- iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
- v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The comprehensive plan calls for single family uses in this area of the shoreline and the area is zoned for residential uses. Many residential properties along Renton's Lake Washington shoreline are served by docks and piers. Boatlifts are becoming more common and a number of lifts have been approved in the last year or two. The lifts are proposed for the private areas of lake shoreline and the adjacent uplands although they are located in the lake. Generally they are non-intrusive visually and as noted, have become a more common element of already permitted docks and piers. In this case the joint-use element of this dock-lift complex does get a bit on the commercial or industrial side of the scale with the long dock, two finger piers and the four lifts. At the same time, the joint-use nature has prevented two more parallel docks from being constructed into the lake just north of this site. The lifts should not present an unusual obstacle to navigation as the dock already extends out into the lake in this area.
3. The proposed lifts should not interfere with public use of the shoreline, particularly since this is a private shoreline. Again, the dock is already permitted in this area.
4. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. The applicant proposes a fully grated deck for the larger platform lift and the other lifts are open structures. The lifts will be out in the lake and not affect the actual shoreline, although the lifts will obviously permit and encourage boating on the lake.
5. The lot is private and extends out into the lake. The proposed lifts will serve this lot and its two northerly neighboring lots. Private uses are permitted in this area of the shoreline. The use is similar to those uses permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.
6. The lifts should not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for residential uses and the usual complement of accessory uses. On a lakeshore property, piers, docks and similar uses including the proposed lift would be considered reasonable accessory uses.

7. The proposed lifts should not create any significant adverse affects on the shoreline environment. The pier and lifts should not further harm the public interest.
8. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. This is an urban shoreline of Lake Washington and piers have been an accepted accessory use of waterfront property and others already exist in Renton and surrounding shoreline areas. The lifts and pilings would be located shoreward of the pier's end. Any number of docks already protrude out into the lake from many of the homes along the shore. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much of a significant effect on the lake or shore.
9. Since lifts are neither permitted nor prohibited outright, it requires review under the Conditional Use criteria. The proposed use is generally consistent with the criteria noted above.
10. The only issue that should be clarified is the nature of the relationship between the three parcels and the joint use nature of the dock and the new lifts. The sale of any of the homes should not be permitted to upset the joint use agreement nor be used to justify the installation of any new dock or lifts for any of the two remaining parcels. Restrictive covenants should be executed that specify that the dock and lifts located at the subject site shall be the only dock and lifts allowed for any of the three parcels and that no additional docks or lifts shall be permissible at any of the three parcels. The covenants shall also specify ownership and access rights and maintenance.

**RECOMMENDATION:**

The Conditional Use Permit and the Shoreline Substantial Development Permit for the boatlifts, platform lift and jet ski lift should be approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures imposed by the Environmental Review Committee in its Determination of Non-Significance - Mitigated issued on August 30, 2010;
2. The applicant shall prepare a restrictive covenant with the appropriate signatures of the property owners and recorded with King County. The document shall specify ownership rights and maintenance provisions for the watercraft lifts. The restrictive covenant shall contain a statement that the covenant shall remain with the property and can only be released by written permission granted by the City of Renton. A copy of the restrictive covenant shall be provided to the Planning Division project manager for review and approval prior to recording with King County. Building permits for the watercraft lifts may be issued only subsequent to recording the restrictive covenant.
3. The applicant shall comply with all construction conditions by the State agencies and all construction conditions provided in the application submitted to the City.
4. Restrictive covenants shall be executed that specify that the dock and lifts located at the subject site shall be the only dock and lifts allowed for any of the three parcels and that no additional docks or lifts shall be permissible at any of the three parcels. As noted above, the covenants shall also specify ownership and access rights and maintenance.

Having reviewed the record in this matter, the Examiner now makes and enters the following:

ORDERED THIS 4<sup>th</sup> day of October 2010.

---

FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 4<sup>th</sup> day of October 2010 to the parties of record:

Gerald Wasser  
1055 S Grady Way  
Renton, WA 98057

Robert Cugini  
Barbee Mill Company  
3905 Lake Washington Blvd. N.  
Renton, WA 98056

Alan Foltz  
Waterfront Construction, Inc.  
205 Northlake Way, Ste. 230  
Seattle, WA 98105

TRANSMITTED THIS 4<sup>th</sup> day of October 2010 to the following:

Mayor Denis Law  
Jay Covington, Chief Administrative Officer  
Julia Medzegian, Council Liaison  
Marty Wine, Assistant CAO  
Gregg Zimmerman, PW Administrator  
Alex Pietsch, CED Administrator  
Jennifer Henning, Current Planning Manager  
Stacy Tucker, Planning Division

Dave Pargas, Fire Marshal  
Larry Meckling, Building Official  
Planning Commission  
Transportation Division  
Utilities Division  
Neil Watts, Development Services  
Janet Conklin, Development Services  
Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., October 18, 2010** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., October 21, 2010.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.



All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.